

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 15.12.2023

Pronounced on: 28.12.2023

WP(C) No. 4072/2019

1. Raj Kumar Appellant(s)/Petitioner(s)
S/O Late Sh. Punnu Ram
R/O Maha Kali Nagar, Upper Gadi
Garh, Tehsil and District Jammu

Through: Mr. Ashish Sharma, Advocate.

Vs

1. Commissioner/Secretary, ... Respondent(s)
School Education Department, Civil
Secretariat Srinagar/Jammu.

2. Director School Education, Jammu

3. Chief Education Officer, Jammu.

**4. Zonal Education Officer Block
Satwari, Jammu**

Through: Mr. Raman Sharma, AAG
Ms. Saliqa Sheikh, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
JUDGMENT

1. The present petition has been filed by the petitioner for directing the respondents to provide job to the son of the petitioner, namely, Charanjeet Raina in lieu of the land acquired by the respondents comprising Survey No. 1125 measuring 1 Kanal situated at village upper Gadi Garh, Tehsil and District Jammu, for construction of a school or in the alternative to pay a suitable compensation to the petitioner. The petitioner has also sought a direction to the respondents to pay the rent of the land acquired by the respondents since 1970, as per the prevailing market rate till the date of filing of the petition.

2. The petitioner claims to be the owner of the land comprising Survey No. 1125, situated at village upper Gadi Garh, Tehsil and District Jammu. The claim projected by the petitioner in the present petition is that the respondents have taken over/acquired the land measuring 1 Kanal comprising Khasra No. 1125 in the year 1970 and raised construction of the school building over the said piece of land i.e. GPS Upper Gadi Garh. The petitioner further claims to have made numerous requests to the respondents to accord consideration to the claim of the petitioner in respect of providing job to his son or in the alternative payment of compensation but till date nothing has been done by the respondents in this regard.
3. Response stands filed by the respondents, stating therein that there was no contract between the parties to engage the son of the petitioner as casual labourer or to the post of Class-IV, whereas in fact the land was donated by the father of the petitioner as per his own free will and without any coercion. It is further averred that the Government school as GPS Gadigarh was constructed in the year 1970 over the land comprising survey No. 1125 measuring 1 Kanal and no document has been placed on record by the petitioner demonstrating that the land was acquired by the respondents and in fact the land was voluntarily donated by the father of the petitioner for construction of the said school.
4. Mr. Ashish Sharma, learned counsel for the petitioner in the very beginning submitted that the petitioner would not press any claim for providing job to his son and also in respect of the rent with effect from 1970 and he submitted that the petitioner is interested only in the

compensation for the land occupied by the respondents. Learned counsel for the petitioner vehemently argued that there is nothing on record to demonstrate that the land was donated by the father of the petitioner to the respondents for construction of school building and otherwise also there is no reason as to why the father of the petitioner would donate the land to the Government for construction of the school building.

5. *Per contra*, Mr. Raman Sharma, learned AAG appearing on behalf of the respondents submitted that the land measuring 1 Kanal was voluntarily donated by the father of the petitioner to the respondents for the purpose of establishing the school building and the school was constructed in the year 1970 and now after a lapse of more than half century, the petitioner cannot lay any claim in respect of compensation for the said land.
6. Heard and perused the record.
7. Respondents have admitted the ownership of the predecessor-in-interest of the petitioner in respect of the land over which the school was constructed by the respondents in the year 1970. There is no documentary evidence on record to substantiate that any document in respect of donation or gift of the land was executed by the father of the petitioner in favour of the respondents. In absence of any documentary evidence demonstrating the transfer of the title in favour of the respondents, it cannot be said that the land was donated by the father of the petitioner to the respondents and the respondents have acquired the title of the land over which school building has been constructed.
8. The respondents have also tried to defeat the claim of the petitioner on the ground that the school was constructed in the year 1970 and the writ

petition has been filed by the petitioner in the year 2019. In this context, it would be appropriate to take note of the judgment of Hon'ble Supreme Court in case titled '**Vidaya Devi Vs. The State of Himachal Pradesh and others**' reported as **AIR, 2020 SC 4079**. The relevant portion of the judgment is reproduced as under:

"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A can be inferred in that Article.

10.05. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in **Tukaram Kana Joshi and others Vs. MIDC** wherein it was held that the State must comply with the procedure for acquisition, requisition or any other permissible statutory mode. The State being a welfare state governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana Vs. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by involving the doctrine of adverse possession to grab the property of its own citizens, as have been done in the present case."

(emphasis added)

9. As per the law laid down by the Hon'ble Supreme Court in the judgment (Supra), it is evident that the State being a welfare State cannot deprive

the citizen of a country of the property except in accordance with the procedure prescribed under law. The State cannot act as an ordinary litigant to defeat the constitutional right of the citizen under Article 300-A of the Constitution by pleading that the respondents have been in occupation of the property for the last 50 years, therefore, the claim of the petitioner is not maintainable. As such, the contention raised by the respondents is misconceived and the same is rejected.

10. In view of what has been said and discussed above, the present petition is disposed of by directing the respondents to place an indent in respect of acquisition of the land measuring 1 Kanal comprising Survey No. 1125 situated at village upper Gadi Garh, Tehsil and District Jammu with the Collector Land Acquisition, Jammu, who after receipt of the same shall proceed in accordance with law for the determination and disbursement of the compensation in favour of the persons including the petitioner, who may be entitled under law to receive compensation for the abovementioned land. The entire exercise shall be concluded within a period of six months from the date certified copy of this order is made available to the respondents.
11. Copy of this order be also provided to Collector Land Acquisition, (Deputy Commissioner), Jammu for information and compliance.
12. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

Jammu
28.12.2023
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.